STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In re Q LINK WIRELESS LLC Application for Designation as an Eligible Telecommunications For Purposes of Receiving Federal Universal Service Funds Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996	ICC Docket No. 12-0095

Q LINK WIRELESS LLC'S OPENING BRIEF

CONFIDENTIAL DESIGNATION
*** XXX *** -- Designates Confidential Information

May 2, 2014

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SUMMARY

Q LINK WIRELESS LLC ("Q LINK"), through its undersigned attorneys and under Section 200.800 of the Commission's Rules of Practice, 83 Ill. Admin. Code Part 200.800, files this Opening Brief and states that the evidentiary record in this proceeding demonstrates that Q LINK is qualified and should be designated as an Eligible Telecommunications Carrier ("ETC") in Illinois for the limited purpose of receiving federal Universal Service Funds under Section 214(e)(2) of the Telecommunications Act. The Commission should enter an Order designating Q LINK as an ETC provider in Illinois in the service area identified in Q LINK Exhibit 2.1. In support, Q LINK states:

INTRODUCTION

Today, there are approximately 1,466,400 households in Illinois that have income levels that are just 35% above the poverty line. (Q LINK Ex. 3, 1:31- 47).[1] Each one of these households are eligible to receive financial support in the form of food stamps, public housing assistance, low income home energy assistance (through LIHEAP), supplemental Social Security income, school lunch assistance, supplemental nutritional assistance, and/or Medicaid assistance because their income levels do not meet minimum national standards. The people in these **1,466,400 low income households in Illinois** are also eligible to receive discounted telephone services through a nationally funded and administered Lifeline Program under the federal Universal Service Fund ("USF.")

Here is the shocking thing: the number of low income households that qualify for the poverty-line assistance under the Lifeline Program is actually increasing. In 2011, the number of

[1] Q LINK Exhibit 3 is the Surrebuttal Testimony of Chuck Campbell, Principal at CGM LLC, in support of Q LINK Wireless LLC, in support of Q LINK Wireless LLC's *Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Funds Pursuant to Section 214(e)(2) of the Telecommunications Act*, ICC Dkt. 12-0095 (filed Mar. 7, 2014).

low income households eligible for the Lifeline Program assistance was 1,222,005. This number rose to 1,466,400 as of March 2014. (*Id*.) (*see also* Q LINK Exhibit 3.1 and Q LINK Exhibit 3.2).

Here is something that is even more shocking: of the approximately 1,446,400 low income households eligible to receive lifeline support, **there are 864,299 low income households in Illinois that are still not receiving Lifeline support. (**Q LINK Ex. 3.1). Only 46% of eligible low income households are receiving the low income – poverty level – support to which they are entitled. In other words, **the majority** of eligible low income households are **not** getting the support to which they are entitled.

Here is the most shocking thing of all: **there are 864,299 eligible low income households entitled to receive federal Universal Service Fund support for their phone service,** and the Illinois Commerce Commission ("Commission" or "ICC") has essentially put a halt to designating eligible telecommunications carriers that can service these customers. Since July 2011, the Commission has designated only **1** new telecommunications carrier to provide the assistance. Since 2013, **the number of unserved low income households in Illinois that are eligible to receive financial support, but cannot because there are not enough designated carriers, has increased from 726,889 low income households to 864,299 households** (Q LINK Exhibit 3.1 and Q LINK Exhibit 3.2), and during this time, Staff has blocked eligible carriers from serving these customers, resulting in an increase in the number of low income households that are not receiving the subsidy which the federal government has deemed necessary. With 864,299 low income households eligible to receive $9.25 per month in Lifeline support, Staff's refusal to apply existing Commission standards, and allow approval for designated carriers is **costing the State of Illinois about $94,827,189 per year in foregone USF dollars.**

Designating Q LINK as an ETC provider is a solution. If granted ETC designation, Q LINK will provide a wireless phone at ***no*** cost to each one of the **1,466,400 low income households in Illinois** that are within its designated service area. Staff, on the other hand, raises illegal, unjustifiable, unsupported and bogus excuses why Q LINK, and virtually every other ETC applicant should be denied entry to the market to serve the **1,466,400 low income households in Illinois.** There is no basis for the histrionic conditions Staff seeks to impose to prevent Q LINK's entry to the market. Q LINK is an exemplar of the types of company that the Commission should be seeking to attract to the market, not drive away. As set forth below, Q LINK: 1) validates a customer's eligibility for Lifeline support through state and federal government agency databases; and 2) relies on the FCC's database to ensure that Q LINK is not providing duplicate benefits to eligible households. There are federal USF funds currently available, waiting to be used to serve eligible customers in Illinois, and each day that passes that Q LINK is denied the ability to serve these low income households, is a day that these eligible subscribers are denied their opportunity to access these funds.

And just so the Commission is not mistaken, the Incumbent Local Exchange Carriers that used to provide Lifeline support to eligible low income households are not interested in providing that support. The vast majority of the eligible low income households that receive benefits, receive them from wireless carriers like Q LINK. This case is about whether the Commission will continue to let Staff continue to make it more difficult for the **864,299 low income households in Illinois** to receive the support for which they are eligible, and which are just waiting to be paid from existing funds**.**

Section 214(e)(2) of the Telecommunications Act[2] authorizes the Commission to designate entities as ETC providers to administer USF programs. Under Section 214(e)(2) and Section 54.201(c) of the Federal Communications Commission ("FCC")'s rules, the Commission may, with an area serviced by a rural telephone company, and shall, with all other areas, designate more than one common carrier as an ETC for a service area designated by the Commission.[3] Section 214(e)(2) also requires that a carrier designated as an ETC (and may thereby provide universal service support to eligible customers throughout its designated service area): (a) offer services supported by federal universal service support mechanisms under Section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including services offered by another ETC); and (b) advertise the availability of and charges for such services using media of general distribution. 47 U.S.C. §214(e)(2). Further, 47 C.F.R. § 54.201(b) states that the Commission shall, on its own motion or upon request, designate a common carrier as an ETC so long as the carrier meets the requirements of 47 C.F.R. § 54.201(d). Section 54.201(d) restates the requirements found in Section 214(e)(1) of the Act.

Federal USF consists of four programs, each administered by the Universal Service Administrative Company ("USAC"). Q LINK's Petition solely seeks ETC designation to provide federal USF support for low-income consumers in the Lifeline program. (Am. App, 1, 13).[4]

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[2] The "Telecommunications Act" or "Act" refers to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Sta. 56, codified at 47 U.S.C. § 151, *et seq.*, as amended.

[3] 47 U.S.C. §214(e)(2); 47 C.F.R. § 54.201(c).

[4] "Am. App." or "Petition" refers to Q LINK Wireless LLC's *Amended Application for Designation as an Eligible Telecommunications Carrier in the State of Illinois*, ICC Dkt. 12-0095, filed Dec. 13, 2012.

SUMMARY OF THE FACTUAL RECORD

Q LINK is a successful provider of commercial mobile radio service ("CMRS") throughout the United States, and was approved to provide CMRS service in Illinois in January, 2012. (Am. App., 3). Q Link provides prepaid Lifeline and non-Lifeline services in 24 states throughout the country, and has thousands of subscribers. (Q LINK Exhibit 1, 5:114-115, 10:244-251; 13:323-329, 15:368-371). Of these subscribers, Q LINK's 2013 January to September 2013 Income Statement shows that [redacted] were Lifeline and [redacted] were non-Lifeline. (Q LINK Exhibit 2, 26:819-827; Q LINK Exhibit 1.5). Q LINK also provides wholesale services, including in Illinois. (Q LINK Exhibit 2, 21:658-660; Q LINK Exhibit 2.3)

Q LINK's prepaid wireless services are affordable, easy to use, and attractive to lower-income and lower-volume consumers, providing them with access to emergency services and a reliable means of communication that can be used both at home and while travelling. (Am. App., 3). Q LINK provides prepaid wireless telecommunications services to consumers by using the Sprint PCS network on a wholesale basis to offer nationwide service. (Am. App., 3; Staff Cross Exhibit 5.0, D.R. 1.01A).

Q LINK seeks to build on its national success by offering wireless prepaid Lifeline and non-Lifeline services in Illinois. Q LINK's business plan is to launch Lifeline and non-Lifeline services at the same time in Illinois. (Am. App., 3; Q LINK Exhibit 1, 11:276-13:306). Q LINK employs this plan because it creates efficiencies relating to coordination, reporting, advertising concerns, and for other reasons. (Q LINK Exhibit 2, 19:599-600). Q LINK has successfully deployed this business plan in 24 other states without exclusive reliance on Lifeline subsidies. (Q LINK Exhibit 1, 10:239-14:337).

Q LINK proposes to provide Lifeline customers in Illinois with the same features and functionalities enjoyed by all other Q LINK customers. (Am. App., 4). A summary of Q LINK's proposed Lifeline plans are below:

Plan 1: 68 Monthly Minutes Plan*

68 anytime minutes per month
(texts are one-third of one minute, i.e. 3 texts = 1 minute)
Net cost to Lifeline customer: **$0 (free after Lifeline discount)**

*This package includes:

- Free handset
- Free calls to Customer Service
- Free calls to 911 emergency services
- Free Voicemail, Caller-ID, and Call Waiting
- 68 anytime minutes (unused minutes rollover)
- Free Domestic Long Distance
- Free International Long Distance to countries designated at www.qlinkwireless.com (listed below)

Plan 2: 125 Monthly Minutes Plan*

125 anytime minutes per month
(texts are one minute, i.e. 1 text = 1 minute)
Net cost to Lifeline customer: **$0 (free after Lifeline discount)**

*This package includes:

- Free handset
- Free calls to Customer Service
- Free calls to 911 emergency services
- Free Voicemail, Caller-ID, and Call Waiting
- 125 anytime minutes (unused minutes rollover)
- Free Domestic Long Distance

Plan 3: 250 Monthly Minutes Plan*

250 anytime minutes per month
(texts are one minute, i.e. 1 text = 1 minute)
Net cost to Lifeline customer: **$0 (free after Lifeline discount)**

*This package includes:

- Free handset
- Free calls to Customer Service
- Free calls to 911 emergency services
- Free Voicemail, Caller-ID, and Call Waiting
- 250 anytime minutes (unused minutes rollover)
- Free Domestic Long Distance

(Am. App., Exhibit 3).

In addition, Lifeline customers may purchase additional bundles of minutes in denominations of $9.99 (for 50 additional minutes), $19.99 (for 100 additional minutes), $24.99 (for 120 additional minutes), $34.99 (for 200 additional minutes), $59.99 (for 500 additional minutes), and $74.99 (for 1,000 additional minutes). (Am. App., 5). Besides voice services, all of Q LINK's Lifeline plans will include a free handset and the following Custom Calling Features: Caller ID, Call Waiting, and Voicemail. (Am. App., 5). And, calls to 911 emergency services are always available regardless of service activation or availability of minutes. Calls to Q LINK customer service are also free. (Am. App., 5). [5]

[5] In addition, Q LINK will not charge Lifeline customers a monthly number-portability charge, consistent with 47 C.F.R. § 52(a)(1)(i)(C).

ARGUMENT

I. Q LINK SATISFIES ALL OF THE REQUIREMENTS TO BE DESIGNATED AS AN ETC IN ILLINOIS.

Q LINK's submissions in this matter demonstrate that Q LINK is qualified, and should be designated as an ETC provider in Illinois. Q LINK satisfies each of the federal and Illinois requirements to be designated as an ETC provider in Illinois.

A. Q LINK SATISFIES EACH OF THE FEDERAL STATUTORY REQUIREMENTS.

Q LINK satisfies each of the federal statutory requirements necessary to be designated as an ETC provider in Illinois. Section 214(e)(2) authorizes the Commission to designate ETC providers under the requirements of that section, as implemented by Commission's rules and 47 C.F.R. §54.101, *et seq.*

The Commission has applied Section 214(e)(2) and 47 C.F.R. § 54.201(c) to permit, with an area served by a rural telephone company (upon request and consistent with the public interest, convenience and necessity), and to require in all other cases, designation of more than one common carrier as an ETC provider for a Commission-designated service area, provided that the applicant carrier satisfies Section 214(e)(1) of the Act and 47 C.F.R. §54.201(d).[6] The Commission will also make a public interest determination before designating an additional ETC provider for an area served by a rural telephone company.[7]

As demonstrated below, Q LINK satisfies each of the federal statutory requirements. The Commission should therefore designate Q LINK an ETC provider in the rural and non-rural areas proposed in Q LINK Exhibit 2.1.

[6] *In re American Broadband and Telecommunications Company Petition for Limited Designation as a Wireless Eligible Telecommunications Carrier*, Order, ICC Dkt. No. 12-0680, 2014 WL 580071 (rel. Feb. 5, 2014) ("*American Broadband ETC Order*"), at *4.

[7] *Id*. at *8.

1. Q LINK HAS IDENTIFIED ITS PROPOSED ETC SERVICE AREA FOR COMMISSION DESIGNATION.

Q LINK's evidentiary submissions identify its proposed ETC service area designation at Q LINK Exhibit 2.1. Q LINK Exhibit 2.1 shows the geographic areas of (i) wire center areas for AT&T Illinois, Frontier North, Inc.- IL, Frontier Communications of the Carolinas, LLC-IL,[8] but only to the extent that (ii) Sprint PCS provides sufficient wireless coverage in the wire center area. That is Q LINK's proposed ETC service area. (Q LINK Exhibit 2, 8:230-233).[9] The Commission should designate the geographic area in Exhibit 2.1 as Q LINK's designated ETC service area.

Q LINK's proposed ETC service area designation is based on wire center areas. (Exhibit 2, 8:236-9:243). The North American Numbering Plan Administration explains that "A wire center is a building in which local switching systems are installed and the outside lines, or wire, leading to customer premises is connected to the central office equipment."[10] (Exhibit 2, 2:48-50). The area surrounding the wire center containing the local lines connecting to the wire center is called the wire center perimeter, or wire center servicing area ("wire center area").[11] (Exhibit

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[8] On April 9, 2013, the Commission approved a change of corporate form for Frontier Communications of the Carolinas Inc. to Frontier Communications of the Carolinas LLC. *See In re Frontier Communications of the Carolinas Inc. Petition for Leave to Change Corporate Form*, Order, ICC 12-0679 (rel. Apr. 9, 2013). All references to "Frontier Communications of the Carolinas Inc." in the evidentiary record are intended to refer to "Frontier Communications of the Carolinas LLC."

[9] Q LINK Exhibit 2 is the Surrebuttal Testimony of Issa Asad, Chief Executive Officer of Q LINK Wireless LLC, in support of Q LINK Wireless LLC's *Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Funds Pursuant to Section 214(e)(2) of the Telecommunications Act*, ICC Dkt. 12-0095 (filed Mar. 7, 2014).

[10] *See, e.g.*, http://www.nanpa.com/relief_planning/FAQs_Area_Code_Relief.pdf, at pg. 7.

[11] *Id*.

2, 2:50-52). In contrast, a rate center, or exchange,[12] is a "geographic area containing one or more wire centers, used as the basis to define local and toll-calling area."[13] (Exhibit 2, 2:52-54).

While Q LINK intends to qualify its Illinois Lifeline customers by zip code (*see* Exhibit 2, 7:187-188, 13:401-404), it modified the identification of its proposed service area to wire centers during the course of these proceedings. Q LINK's Initial Petition plainly stated that Q LINK intended to use zip codes by declaring that "Applicant does not have access to a list of exchanges in which it seeks wireless ETC designation; however, Applicant has provided a list of IL ILECs and zip codes in its coverage area."[14] In its amended Petition, Q LINK modified its proposed ETC service area designation to wire centers by stating that "Q LINK requests designation as an ETC in Sprint's coverage area in Illinois, ***as specified in the wire center list*** and coverage maps attached as Exhibit 6." (Am. App., 12) (emphasis added). The final list of wire center areas consisting of Q LINK's proposed ETC service area is located at Q LINK Exhibit 2.1. (Exhibit 2, 8:223-228). At no time did Q LINK commit to identifying its proposed ETC service area using only exchanges or rate centers. (Exhibit 2, 8:213:215).

The Commission has authority to, and should, designate Q LINK's ETC service area in Illinois by wire center area. Section 54.207(a) of the FCC's rules define a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). In areas served by a non-rural incumbent local exchange companies ("ILECs"), such as AT&T Illinois, the Commission may establish an ETC service area for a competitor without federal concurrence. *See* 47 U.S.C. §

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[12] Rate centers are used to define toll calling areas; an exchange is a geographic area where all customers within the area receive the same pricing. H. Newton, *Netwon's Telecom Dictionary*, 22nd Updated and Expanded Edition, 2006.

[13] *Id.*

[14] Q LINK Wireless LLC's *Application for Designation as an Eligible Telecommunications Carrier in the State of Illinois*, ICC Dkt. 12-0095, filed Feb. 3, 2012 ("Initial Petition").

214(e)(5). Therefore, for service areas served by non-rural ILECs, there are no restrictions on how the Commission defines a "service area" for purposes of designating a competitive ETC, and the Commission may designate Q LINK's ETC service area by wire center area.

In addition to non-rural areas, Q LINK also seeks designation in rural wire center areas. (Am. App., 12). For service areas served by a rural ILECs, Section 214(e)(5) of the Act and 47 C.F.R. § 54.207(b) define the term "service area" to be a rural telephone company's "'study area' unless and until the [FCC] and the states, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company." However, the FCC eliminated the distinction between rural and non-rural areas for the purpose of defining service areas for Lifeline-only ETC providers,[15] as Staff recognizes (Staff Exhibit 1, 6:139-144).[16] In the *Virgin Mobile et al. Forbearance Order*, the FCC states that, "[f]or pending and future Lifeline-only designation requests, carriers' service area will no longer be required to conform to the service area of the rural telephone companies serving the same area."[17] "As a result, if a [state] commission designates a carrier as a limited, Lifeline-only ETC in part of a rural service area, that designation will not require redefinition of the rural telephone company's service area."[18] Q LINK is a Lifeline-only ETC applicant (Am. App., 1), and therefore a redefinition of rural telephone companies' service areas is not required.

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[15] *In the Matter of Telecommunications Carriers Eligible for Support, Lifeline and Link Up Reform, Virgin Mobile, et al.*, Memorandum Opinion and Order, WC Dkt. Nos. 09-197, 11-42, FCC 13-44, 28 FCC Rcd. 4859, 4863 ¶ 8 (rel. Apr. 15, 2013) ("*Virgin Mobile et al. Forbearance Order*").

[16] Staff Exhibit 1 is the Direct Testimony of Dr. Qin Lui, Federal Policy Group, Policy Division, Illinois Commerce Commission ("Staff"), filed in Q LINK Wireless LLC's *Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Funds Pursuant to Section 214(e)(2) of the Telecommunications Act*, ICC Dkt. 12-0095 (filed Oct. 30, 2013).

[17] *Virgin Mobile et al. Forbearance Order*, at ¶ 15.

[18] *Id*. at ¶ 8.

The Commission may designate Q LINK's proposed ETC service area by wire centers for both rural and non-rural areas. The FCC and the Commission, which together must approve any service area redefinition for rural areas, have declared that it will "rigorously apply" a standard whereby ***the wire center*** is the appropriate minimum geographic area for ETC designation for rural areas. *See i-wireless ETC Order*;[19] *Cricket ETC Order* ("[w]ith respect to 'service area' definitions, the FCC which along with the Commission must approve any service area redefinition, has declared that it will 'rigorously apply' a standard whereby the wire center is the appropriate minimum geographic area for ETC designation");[20] *Telrite ETC Order* (same);[21] *American Broadband ETC Order* (same).[22] Each of these Commission decisions affirm the use of wire center areas, as recognized by the FCC's use of wire centers for ETC service areas for both rural and non-rural areas, through adoption of the *ETC Designation Order*.[23]

The Commission's adoption of the *ETC Designation Order* permits ETC applicants' the ability to use wire centers for both rural and non-rural areas. In the *ETC Designation Order*, the

[19] *In re i-wireless, LLC d/b/a K-Wireless, LLC d/b/a Access Wireless Application for Designation as an Eligible Telecommunications Carrier in the State of Illinois for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Order, Dkt. ICC 11-0073 (rel. Apr. 15, 2011) (the "*i-wireless ETC Order*").

[20] *In re Cricket Communications, Inc. Application for Designation as an Eligible Telecommunications Carrier*, Order, ICC Dkt. No. 10-0453 (rel. Jul. 11, 2012) (the "*Cricket ETC Order*").

[21] *In re Telrite Corporation Application for Designation as an Eligible Telecommunications Carrier under the Telecommunications Act of 1996*, Order, ICC Dkt. 10-0512 (rel. May 4, 2011) ("*Telrite ETC Order*").

[22] Many Commission decisions also inconsistently point to both the use of exchanges in the *Ameritech ETC Order* and the *ETC Designation Order* applying wire center areas to both rural and non-rural areas. *See, e.g.*, *i-wireless ETC Order*.

[23] *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 20 F.C.C.R. 6371, Report and Order, FCC Dkt. No. 96-45 (rel. Mar. 17, 2005) ("*ETC Designation Order*"), at ¶¶73-79, *citing Federal-State Joint Board on Universal Service, adopting Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Dkt. No. 96-45, 19 FCC Rcd. 6438, (rel. rel. Apr. 12, 2004) ("*Highland Cellular ETC Designation Order*") and *Federal-State Joint Board on Universal Service* and *Virginia Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Dkt. No. 96-45, 19 FCC Rcd. 1563 (rel. Jan. 22, 2004) ("*Virginia Cellular ETC Designation Order*").

FCC stated, with respect to rural areas that, "In the *Highland Cellular ETC Designation Order*, the Commission concluded, among other things, that ***an ETC may not designate below the wire center level served by a rural incumbent LEC***" and that "a rural telephone company's wire center is an appropriate minimum geographic area for ETC designation."[24] But with respect to all areas, the *ETC Designation Order* goes on to state that, "[c]onsistent with USAC's request, we note that all future ETC designation orders adopted by the [FCC] will include: (3) a list of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) code."[25] Further, in the *Highland Cellular ETC Designation Order and Virginia Cellular ETC Designation Order*, the FCC specifically used wire center areas for designating ETC service areas in both rural and non-rural areas.[26] And, these FCC decisions expressly listed wire center areas for both rural and non-rural areas ***by wire center areas only*** to designate an ETC's service area.[27]

In addition, the Commission's practice demonstrates that ETC applicants may use wire centers for both rural and non-rural areas to identify its proposed ETC service area. For example, in the *Cricket ETC Order*, the Commission designated Cricket's ETC service area based on the ETC applicant's identification of wire center Common Language Location Identifiers ("CLLIs")

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[24] *ETC Designation Order*, 20 F.C.C.R. 6371, at ¶¶ 15, 33 (emphasis added); *see also* ¶23 (analyzing an ETC duties for supported services using a "wire center-by-wire center" basis).

[25] *Id*. at ¶¶ 23, 65.

[26] *Virginia Cellular ETC Designation Order,* ¶¶ 36-38 & Appendix A, C (using wire centers for both rural and non rural areas); *Highland Cellular ETC Designation Order*, ¶¶ 34-35 & Appendix A, C (using wire centers for both rural and non rural areas); *see also* ¶ 33 (finding that the wire center area is the minimum geographic used for rural area service area ETC designations and that partial rural wire center areas may not be used for ETC service area designations). Q LINK does not seek designation in any partial wire centers; its proposed ETC service area designation consists of the entire wire center areas for the wire centers listed on Q LINK Exhibit 2.1.

[27] *Virginia Cellular ETC Designation Order*, Appendix A & C (using wire centers for both rural and non-rural designations); *Highland Cellular ETC Designation Order*, Appendix A & C (using wire centers for both rural and non-rural designations)

along with the associated rate center.[28] And, most recently, in January 2014, the Commission looked to wire centers, not rate centers or exchanges, when it examined the viability of ETC providers' service areas, stating in the *USCOC Petition to Relinquish ETC Order*[29] that:

> Each of the areas to be relinquished is currently served by at least one Commission designated ETC. Each ***wire center*** listed on Exhibits A and B, attached to the petition, is serviced by an ILEC with ETC status. Also, many of the ***wire centers in the areas to be relinquished are served by another wireless ETC***.

Ignoring FCC precedent on rural areas and the Commission practice for designating ETC services in rural and non-rural areas, Staff's testimony urges the Commission to ignore these FCC decisions using wire center areas, and instead impose a rate or exchange area as the minimum geographic area for designation of an ETC. (Staff Exhibit 1, 18- 20). Staff's position is based on a 17 year-old wireline ETC case in which the Commission designated Ameritech Illinois' (now AT&T Illinois) tariffed exchange areas as its ETC service area.[30] In the *Ameritech ETC Order*, Ameritech Illinois specifically requested that the Commission use its tariffed exchange areas for its ETC service area. Unremarkably, the Commission affirmed Ameritech Illinois' choice to use these tariffed exchange areas. The Commission's decision to accept Ameritech Illinois' use of exchanges was based on Staff's insistence that an ETC's service area should be designated "small enough so as not to impede entry by potential competitors," but the Commission still "retain[ed] the right to modify its definition of service area of non-rural carriers

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[28] (Q LINK Exhibit 2, 3:77-80) (*See also Second Amended Application of Cricket Communications, Inc. for Designation as an Eligible Telecommunications Carrier*, ICC Dkt. No. 10-0453, filed February 10, 2011, Exhibit B, available at: http://www.icc.illinois.gov/docket/files.aspx?no=10-0453&docId=161664).

[29] *USCOC of Central Illinois, LLC, Petition to Partially Relinquish its Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2),* ICC Dkt. No. 13-0480, Order (rel. Jan. 7, 2014) (the *"USCOC Petition to Relinquish ETC Order*"); *see also* (Q LINK Exhibit 2, 3:83-4:90).

[30] (Staff Exhibit 1, 18:421-19:425); *citing Illinois Bell Telephone Company (Ameritech Illinois), Request for designation as an eligible telecommunications carrier for the purpose of receiving high cost, low-income and rural healthcare funding assistance*, Order, ICC Dkt. 97-0507 (rel. Dec. 17, 1997) ("*Ameritech ETC Order*").

to the extent that an interested party demonstrates that defining a service area as an ‘exchange’ . . . does not encourage entry by competitors.”[31]

The Commission should not adopt the requirement to use exchanges to designate ETC service areas based on a wireline ILEC’s tariff designations. As described above, the requirement is inconsistent with FCC requirements for rural areas, and FCC and Commission decisions and practice for both rural and non-rural areas.[32] In addition, the use of exchanges discourages entry into the market by wireless providers. Using wire centers, rather than exchanges, is important for resale wireless carriers seeking ETC designation because the underlying wireless coverage may be limited to only one or two wire center areas in certain exchanges. Under Staff’s “exchange-only” approach, wire center areas with sufficient coverage in an exchange that otherwise lacks coverage would be excluded from wireless ETC service areas. The effect of such an approach would be to discourage and deny market entry to potential ETC providers in Illinois by unduly constricting their potential service area and to denying Lifeline-eligible consumers the ability to obtain Lifeline services from those providers. Further, unlike Ameritech Illinois, which provided services based on their tariffed wireline exchange definitions, exchanges have no bearing on a wireless geographic territory because there is no “local” calls rated by exchange boundaries for wireless providers. The use of exchanges therefore is completely divorced from the service being provided by the ETC applicant. Lastly, the use of wire centers is better than exchanges for wireless providers. A single wire center area is often a smaller geographic designation than a single exchange, so identifying a wire center area is usually a more precise identification of what the proposed geographic service area will be.

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[31] *Ameritech ETC Order*, Conclusion.

[32] *Virginia Cellular ETC Designation Order*; *Highland Cellular ETC Designation Order*; *i-wireless ETC Order*.

Here, Q LINK's proposed ETC service area designation based on wire centers is appropriate and should be affirmed by the Commission. As a wireless reseller, the use of exchanges is immaterial to Q LINK's actual use or identification of its proposed ETC service area. Moreover, the identification of wire center areas is more precise, often showing a smaller area than that which would be shown if exchanges were used. (*See* Q LINK Exhibit 1.3) (providing wire center maps for Q LINK's proposed ETC service area). And, Q LINK's use of wire center areas is consistent with FCC and Commission decisions and practice. Consequently, the Commission should affirm Q LINK's identification of its proposed ETC service area in rural and non-rural areas by wire center areas, as indicated in Q LINK Exhibit 2.1.

Lastly, as described more fully in Section I.D. below, designating Q LINK as an ETC provider throughout the requested service areas will serve the public interest, convenience and necessity. Only one other Lifeline provider in Illinois offers similar Lifeline plans to those proposed by Q LINK; that provider is Tracfone Wireless Inc. (d/b/a Safelink) ("Tracfone"), which is the most successful Lifeline provider in Illinois. (Q LINK Exhibit 2, 28:871-872) (Q LINK Exhibit 3.2). Q LINK's proposed service area differs from Tracfone's service area, and therefore offers Illinois consumers in those areas one of the most popular set of Lifeline plans in Illinois.[33] (Q LINK Exhibit 2, 29:898-903).

In light of the FCC decisions and Commission Orders and actions using wire center areas to designate ETC service areas for both rural and non-rural areas, it cannot be disputed that the Commission can, and should, accept Q LINK's proposed ETC service area as designated by wire

[33] "In Illinois, TracFone obtains service from the following underlying carriers: ALLTEL; AT&T Wireless; T-Mobile; US Cellular; and Verizon Wireless" and attached a list of rural and non-rural ILEC names (without exchanges, zip codes or wire centers). *In re TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the State of Illinois for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Dkt. No. 09-0213, *see* Petition and Exhibit 11; *see also* Order, designating the service area as "all portions of the State of Illinois where wireless service is available from TracFone's underlying carriers."

center areas. The Commission therefore should affirm Q LINK's ETC proposed service area by wire center area, and designate Q LINK as an ETC provider in the wire centers identified in Q LINK Exhibit 2.1.

2. Q LINK HAS THE ABILITY TO PROVIDE SUPPORTED SERVICES IN ITS PROPOSED SERVICE AREA

Q LINK's evidentiary submissions also demonstrate that Q LINK has the ability to provide supported services throughout its proposed ETC designated service area. Q LINK is able (*i.e.*, has the ability) to provide supported services throughout its proposed ETC service area because (1) the Commission has granted it authority to provide wireless service throughout Q LINK's proposed ETC service area, and (2) Q LINK has provided evidence of a wireless resale agreement with Sprint PCS demonstrating that Q LINK <u>can</u> provide supported services in the proposed ETC service area. (Q LINK Exhibit 2, 12:355-362) (*see also* Q LINK Exhibit 1, 6:151-7:160).

Q LINK has the ability to provide supported services throughout its proposed ETC service area because the Commission has granted Q LINK authority to provide wireless service in each of the wire centers identified in Q LINK's proposed ETC service area. In Docket 11-0739, Q LINK applied for resold, prepaid wireless certification in "areas covered by Sprint, Verizon and AT&T" in Illinois.[34] On January 25, 2012, the Commission granted Q LINK's certification petition, authorizing Q LINK to provide resold, prepaid wireless certification in "areas covered by Sprint, Verizon and AT&T" in Illinois .[35]

[34] Q LINK Wireless LLC's *Application for a Certificate of Authority to Operate as a Prepaid Wireless Provider throughout the State of Illinoi*s, ICC Dkt. 11-0739 (filed Nov. 23, 2011), Section I, Nos. 2 & 3.

[35] Q LINK Wireless LLC's *Application for a Certificate of Authority to Operate as a Prepaid Wireless Provider throughout the State of Illinois*, Order, ICC Dkt. 11-0739 (rel. Jan. 25, 2012).

Q LINK's proposed ETC service area designation falls completely within the Commission's grant of authority. First, Q LINK's proposed ETC service area consists solely of wire center areas for AT&T Illinois, Frontier North, Inc. - IL, Frontier Communications of the Carolinas, LLC- IL. (Q LINK Exhibit 2, 8:230-231).[36] AT&T Illinois corresponds to "AT&T",[37] and is therefore part of the Commission's grant of resold, prepaid wireless authority to Q LINK in Illinois. Further, Frontier North, Inc. – IL and Frontier Communications of the Carolinas, LLC – IL correspond to "Verizon,"[38] and is therefore part of the Commission's grant of resold, prepaid wireless authority to Q LINK in Illinois. Second, wire center areas for these ILECs are only included in Q LINK's proposed ETC service area to the extent that (ii) Sprint PCS provides sufficient wireless coverage in the wire center area for Q LINK to resell wireless services. (Q LINK Exhibit 2, 8:231-233). Consequently, Q LINK's proposed ETC service area designation is completely within the Commission's grant of authority to Q LINK for resold, prepaid wireless certification in "areas covered by Sprint, Verizon and AT&T" in Illinois.

[36] *See also* Q LINK Exhibit 2.1 (stating that that "This list shows wire center areas, for AT&T Illinois, Frontier North, Inc. – IL, and Frontier Communications of the Carolinas, Inc. – IL, including wire centers with sufficient Sprint PCS coverage for Q LINK to provide supported services. Wire centers with insufficient Sprint PCS coverage are excluded from this list …").

[37] See http://www.icc.illinois.gov/utility/Profile.aspx?id=3435, listing "AT&T Illinois" as a d/b/a of Illinois Bell Telephone Company.

[38] *See* http://www.icc.illinois.gov/utility/Profile.aspx?id=2198, listing "Verizon North Inc." as a former utility name for Frontier North Inc., and *In re Joint Application for the approval of a Reorganization pursuant to Section 7-204 of the Public Utilities Act; the Issuance of Certificates of Exchange Service Authority pursuant to Section 13-405 to New Communications of the Carolinas, Inc.; the Discontinuance of Service for Verizon South Inc. pursuant to Section 13-406; the Issuance of an Order Approving Designation of New Communications of the Carolinas, Inc. as an Eligible Telecommunications Carrier Covering the Service Area Consisting of the Exchanges to be Acquired from Verizon South Inc. upon the Closing of the Proposed Transaction and the Granting of All Other Necessary and Appropriate Relief*, Order, ICC Dkt. No. 09-0268 (rel. Apr. 21, 2010) (where, as part of Frontier Communications' acquisition of former Verizon in the State of Illinois, the Commission granted New Communications of the Carolinas, Inc. a certificate of authority to operate as a facilities-based local exchange carrier) On August 6, 2010, the Commission activated the certificate after a name change to "Frontier Communications of the Carolinas Inc."

Q LINK also has the ability to provide supported services throughout its proposed ETC service area because Q LINK has provided evidence of a wireless resale agreement with Sprint PCS demonstrating that Q LINK can provide supported services in the proposed ETC service area. Q LINK is a wireless reseller and provides wireless services using Sprint PCS's wireless network. (Am. App., 3) (Q LINK Exhibit 1, 6:151-7:153). Q LINK provided the Commission with a copy of the contract under which it purchases Sprint PCS services (Staff Cross Exhibit 3.0, DR-2.02 Response), and provided evidence that Q LINK has successfully operated under that Sprint PCS agreement since 2012, acquiring thousands of subscribers in 24 of states nationally. (Q LINK Exhibit 1, 5:114-115, 10:244-251; 13:323-329, 15:368-371; Staff Cross Exhibit 5.0, D.R. 1.01A).

In addition, the evidentiary record also demonstrates that Q LINK's proposed ETC service area provides sufficient coverage to provide supported services. Q LINK's proposed ETC service area designation consists exclusively of ILEC wire center areas with sufficient Sprint PCS coverage to allow Q LINK to resell Sprint PCS's services; wire centers with minimal or no current Sprint PCS wireless coverage are excluded from Q LINK's proposed ETC service area. (Q LINK Exhibit 2, 10:284-289, 12:377-379). Q LINK has excluded certain wire center areas where Sprint PCS provides insufficient coverage. (*See* Exhibit 2.2). And, Q LINK has provided the Commission with wire center maps showing current coverage in wire center areas in the proposed ETC service area designation (*See* Q LINK Exhibit 1.3), and Sprint confirms that these coverage service maps are accurate. (*See* Q LINK Exhibit 1.4). Therefore, Q LINK has the ability to provide resale services in each wire center identified in Q LINK Exhibit 2.1, and Q

LINK has the ability to provide supported services throughout its proposed ETC designated area.[39]

Q LINK's position as a reseller of Sprint PCS wireless services also satisfies the federal statutory requirements of demonstrating an ability to provide all facets of "supported services." Section 214(e)(1)(A) of the Act provides that an ETC shall, throughout the designated service area, "offer the services that are supported by federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services including the services offered by another eligible telecommunications carrier."

Q LINK satisfies each of the requirements of Section 214(e)(1). Q LINK is a common carrier because it will resell the wireless telecommunications services of Sprint PCS in Illinois. (Am. App., 3; Q LINK Exhibit 1, 3:68-70). CMRS providers are treated as common carriers for regulatory purposes.[40] In addition, Q LINK has a forbearance from the "own facilities" requirement of Section 214(e)(1)(A) of the Act. In its *Lifeline Reform Order*, the FCC stated that the Commission will forbear from the "own-facilities" requirement in Section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to certain conditions. Q LINK

[39] Staff's testimony fails to make an analysis of the information provided by Q LINK because Staff insists that it will only examine information based on "exchanges" and not "wire centers," insisting on identification of "households" for partial exchanges. (*See, e.g.,* Staff Exhibit 1, 21:465-481). Staff provides no support for its insistence on a house-by-house analysis of geographic areas less than exchanges.

[40] *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd. 1411, 1425 ¶ 37, 1454-55 ¶102 (rel. Mar. 7, 1994) (wireless resellers are included in the statutory "mobile services" category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. §332(c)(1)(A) ("mobile services" providers are common carriers); *see also PCIA Petition for Forbearance for Broadband PCS*, WT Dkt. No. 98-100, Memorandum Opinion and order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16911 ¶ 111 (1998) ("We concluded [in the *Second Report and Order*] that CMRS also includes the following common carrier services: cellular service, … all mobile telephone services and resellers of such services.")

satisfies these conditions.[41] Q LINK provides its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes. (Am. App., 5, 10). Q LINK also provides its Lifeline subscribers with E911-compliant handsets and replaces non-compliant handsets for Lifeline customers at no charge. (Am. App., 10; Am. App., Exhibit 3). Further, Q LINK filed, and the FCC approved, Q LINK's Compliance Plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the *Lifeline Reform Order* and further safeguards against waste, fraud and abuse.[42]

Q LINK also has the ability to provide all required "supported services" under federal universal service support mechanisms, as defined by 47 C.F.R. § 54.101(a), through its resale agreement with Sprint PCS. The following services must be offered by an ETC as "supported services": "voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers."[43] Q LINK provided evidentiary submissions demonstrating that Q LINK has the ability to provide each of these four supported services.

The first function identified in Section 54.101(a) is voice grade access to the public switched network. "Voice grade access" is "voice telephony" and has been defined as a

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[41] *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability through Digital Literacy Training*, WC Dkt. Nos. 11-42, 03-109, 96-45, 12-23, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd. 6656 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*"), ¶ 368.

[42] (Q LINK Exhibit 1, 5:104-111) (*see also* Am. App., Exhibit 4 and Q LINK's Compliance Plan at http://apps.fcc.gov/ecfs/document/view?id=7021995283).

[43] 47 C.F.R. § 54.101(a).

functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this function, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz.[44] Q LINK has demonstrated that it has the ability to provide voice grade access to the public switched telephone network through its wholesale agreement with Sprint PCS. (Am. App., 10).

The second required function of supported services is minutes of use for local service provided at no additional charge to end users. Q LINK's wireless service plan provides local usage at no additional charge, consistent with the requirements of 47 C.F.R. §54.101(a). (Am. App., 10, 11, 14-15, Am. App., Exhibit 3).

The third supported service is access to emergency service through the dialing of "9-1-1," and includes access to services, such as 911 and enhanced 911 to the extent the local governments or other public safety organizations in the proposed ETC service area have implemented such service.[45] Q LINK will provide 911 and E-911 access to emergency services throughout its proposed service area through its wholesale service provider, Sprint PCS. (Am. App., 10). Further, Q LINK's Compliance Plan states that Q LINK "provide[s] its Lifeline

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[44] *See Connect America Fund, et al., Wc Kt. No. 10-90, et al.,* Report and order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order and FNPRM*"), ¶ 78; *see also In the Matter of Federal State Joint Board on Universal Service Order,* Report and Order, CC Dkt. No. 96-45, 12 FCC Rcd. 8776, 8810, ¶61 (rel. May 8, 1997).

[45] 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "9-1-1," to call emergency services through a Public Safety Answering Point ("PSAP") operated by the local government. 47 C.F.R. §20.18(b). "Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information ("ANI"), which enables the PSAP to call back if the call is disconnected, and automatic location information ("ALI"), which permits emergency service providers to identify the geographic location of the calling party. *See* 47 C.F.R. §20.18(d); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Dkt. No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 18676, 18683, ¶10 (rel. Jul. 26, 1996).

customers with access to 911 and E911 services, regardless of activation status and availability of minutes."[46]

The fourth required supported service, toll limitation for qualifying low-income customers, [47] does not apply to Q LINK. The FCC has clarified that ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.[48] Q LINK's calling plans do not distinguish between toll and non-toll calls at the point of dialing. (Am. App., 4-5, Am. App., Exhibit 3). Further, Q LINK expressly states that its service "is not offered on a distance-sensitive basis and local and domestic long distance minutes are treated the same." (Am. App., 11). Consequently, Q LINK's resold wireless service does not distinguish between toll and non-toll calls; and under the FCC's *Lifeline Reform Order*, Q LINK is not required to offer toll limitation services.

In sum, the evidentiary record in this matter demonstrates that Q LINK has the ability to offer supported services through Q LINK's proposed ETC service area, and that Q LINK satisfies each requirement in Section 214(e)(1)(A) of the Act. The Commission should affirm that Q LINK has demonstrated that it will offer, and has the capability to provide, each of the supported services in its proposed ETC service area in which it seeks ETC status for its wireless operations.

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[46] Am. App., Exhibit 4 and Q LINK's Compliance Plan at http://apps.fcc.gov/ecfs/document/view?id=7021995283, at page 6.

[47] 47 C.F.R. §54.400(d) defines toll limitation services.

[48] *Lifeline Reform Order*, ¶ 49, 226-239. 47 C.F.R. §54.403(c) describes the service requirements.

3. Q LINK WILL ADVERTISE THE AVAILABILITY OF SUPPORTED SERVICES THROUGHOUT ITS DESIGNATED SERVICE AREA.

Section 214(e)(1)(B) of the Act also requires that, throughout the designated service area, an ETC must "advertise the availability of [its Lifeline] services and [its Lifeline] charges therefor using media of general distribution."[49] The FCC's rules also require an ETC to advertise the availability of Lifeline service "in a manner reasonably designed to reach those likely to qualify for the service." 47 C.F.R. §54.405(b).

The evidentiary record demonstrates that Q LINK will satisfy the requirement of Section 214(e)(1)(B) of the Act. Q LINK's Petition makes clear that Q LINK will advertise the availability of its Lifeline programs throughout its proposed service area, in a manner reasonably designed to reach those likely to qualify for Lifeline services using many mediums for outreach, including internet, radio, television and newspaper. (Am. App. 11). Q LINK also explains that it will engage in advertising campaigns specifically targeted to reach those likely to qualify for Lifeline services, promoting the availability of cost-effective wireless services to low-income consumers. (Am. App. 11). Q LINK expanded on this commitment in its testimony by disclosing its confidential Marketing and Outreach Plan for Illinois, at Q LINK Exhibit 1.1, and providing information about Q LINK's unique kiosk-based outreach and marketing approach to reach consumers not currently being served by existing Illinois ETCs. (Q LINK Exhibit 1, 34:815-35:827) (Q LINK Exhibit 2, 30:913-919). Q LINK also provided a description of its kiosk-based outreach program and states that it has entered into an agreement with a third-party to implement its kiosk program in states where it is Lifeline ETC designated. (Q LINK Exhibit 2.5, Q LINK Exhibit 2, 30:915-918).

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[49] *See also* 47 C.F.R. §201(d)(2).

Q LINK has demonstrated that it will advertise the availability of its Lifeline programs in its proposed ETC service area designation, and that its Lifeline advertising will comply with Section 214(e)(1)(B) of the Act and be provided in a manner reasonably designed to reach those likely to qualify for the service as directed by 47 C.F.R. §54.405(b). The Commission therefore should affirm that the record demonstrates that Q LINK satisfies the requirements of Section 214(e)(1)(B) of the Act.

B. THE FCC'S ETC DESIGNATION ORDER AND THE COMMISSION'S ADOPTION OF FCC REQUIREMENTS.

The FCC's Report and Order in the *ETC Designation Order* described what the FCC referred to as "the minimum requirements" it would use in designating a carrier as an ETC, and urged that these procedures serve as guidelines for state commissions to follow in evaluating ETC applications properly before those commissions.[50] These guidelines are codified in 47 C.F.R. §54.202, which was subsequently amended in part by the FCC's *Lifeline Reform Order.*[51] As modified by the *Lifeline Reform Order*, Section 54.202 requires that a carrier seeking designation as a Lifeline-only ETC satisfy the following requirements: (1) compliance with the service requirements applicable to the support it receives; (2) ability to remain functional in emergency situations; (3) compliance with consumer protection and service quality standards; (4) demonstrate its financial and technical capacity to provide the Lifeline service; and (5) submit information on the terms and conditions of any voice telephony service plans offered to Lifeline subscribers.[52] 47 C.F.R. §54.202(a).

[50] *ETC Designation Order*, ¶1.

[51] *Lifeline Reform Order*, ¶¶ 386-388.

[52] 47 C.F.R. §54.202(a).

State commissions are not bound by the FCC guidelines when they evaluate ETC applications.[53] However, at Paragraph 31 of the *ETC Designation Order*, the FCC clarified that a state commission's ability to expand these requirements are not unlimited regarding CMRS and wireless providers: "states may extend ***generally applicable, competitively neutral requirements that do not regulate rates or entry*** and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service."[54] Further, the *ETC Designation Order* makes clear that annual certification and reporting requirements should be "applied uniformly on all ETCs they have previously designated."[55]

In the *ETC Designation Order*, the FCC also clarified the public interest analysis for ETC designations by adopting the fact-specific public interest analysis developed in prior orders.[56] In the *ETC Designation Order*, the FCC acknowledged that Congress did not establish specific criteria to be applied under the public interest test, and stated that the public interest benefits of a particular ETC designation must be analyzed in a manner: (1) consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; (2) while ensuring the availability of quality telecommunications services at just, reasonable and affordable rates; and (3) promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high cost areas.[57] In addition, the FCC stated its belief that Section 214(e)(2) of the Act "demonstrates Congress' intent that state commissions evaluate local factual situations in ETC cases and to exercise

[53] *ETC Designation Order*, ¶¶ 58-64.

[54] *Id*. at ¶ 31 (emphasis added).

[55] *Id*. at ¶ 58.

[56] *Id.* at ¶ 40.

[57] *Id*.

discretion in reaching their conclusions regarding the public interest, convenience and necessity, ***as long as such determinations are consistent with federal and other state law***."[58]

In cases before it, the FCC stated that it would first consider a variety of factors in the overall ETC determination, "including the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering."[59] Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the FCC said it will also conduct a "creamskimming" analysis that compares the population density of each such wire center in which the ETC applicant seeks designation against that of all wire centers in the study area in which the ETC applicant does not seek designation.[60]

The Commission has repeatedly adopted the FCC's *ETC Designation Order* as the basis for analyzing an applicant's request for ETC designation.[61] Consistent with past Commission rulings, the Commission should find that it will use the guidelines from the FCC's *ETC Designation Order*, as amended by the *Lifeline Reform Order* (where applicable), as the general framework and minimal requirements for considering the ETC designation requested by Q LINK and for establishing whether Q LINK's application is in the public interest.

[58] *Id*. at ¶ 61 (emphasis added).

[59] *Id*. at ¶ 41.

[60] *Id*.

[61] *See, e.g., American Broadband ETC Order*; *Cricket ETC Order*; *Telrite ETC Order*; *i-wireless ETC Order*; *In re YourTel America's Application for Designation as an Eligible Telecommunications Carrier for purposes of Receiving Federal Universal Service Support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996,* Order, ICC Dkt. No. 09-0605 (rel. Mar. 24, 2010); *In re PlatinumTel Communications, LLC, Application for Designation as an Eligible Telecommunications Carrier for purposes of Receiving Federal Universal Service Support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996*, Order, ICC Dkt. No. 09-0269 (rel. Nov. 24, 2009); *In re Nexus Communications, Inc.,* Order, ICC Dkt. No. 06-0381 (rel. Oct. 25, 2006).

C. Q LINK SATISFIES EACH OF THE REQUIREMENTS UNDER FEDERAL REGULATIONS.

In addition to federal statutory requirements described above, Q LINK also complies with all FCC regulations relating to ETC designation. Based on the evidentiary record in this proceeding, the Commission should find that Q LINK satisfies each of the federal regulatory requirements to be designated as an ETC provider in the service area identified in Q LINK Exhibit 2.1.

Q LINK satisfies the requirements of 47 C.F.R. § 54.202. As defined in the *ETC Designation Order* and the *Lifeline Reform Order*, the requirements of Section 54.202, while not required by the FCC, are encouraged to be adopted by the Commission and have been consistently applied by this Commission in ETC applications.[62] Q LINK satisfies each requirement of Section 54.202.

1. Q LINK COMPLIES WITH THE SERVICE REQUIREMENTS APPLICABLE TO THE SUPPORT IT WILL RECEIVE.

Under FCC regulations and as required by the Commission, an ETC applicant must certify that it will comply with the service requirements applicable to the support that it receives.[63] As further discussed above, Q LINK has demonstrated that it offers each of the services supported by the Federal USF mechanisms, as set forth in 47 C.F.R. § 54.101, and will offer these services throughout the area in which it is designated as an ETC. (Am. App., 9-11). Therefore, the Commission should conclude that Q LINK has presented sufficient evidence

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[62] *See, supra*, fn. 61. The language of 47 C.F.R. § 54.202 expressly only applies to ETC applications that are reviewed by the FCC for federal-default states. However, with the Commission's adoption of the *ETC Designation Order* as its guide for reviewing ETC applications, the requirements of Section 54.202 apply to Illinois ETC applicants.

[63] 47 C.F.R. §54.202(a)(1)(i).

regarding Section 202(a)(1)(i)'s requirement that an ETC applicant "certify that it will comply with service requirements applicable to the support it receives."

2. Q LINK HAS THE ABILITY TO REMAIN FUNCTIONAL IN EMERGENCY SITUATIONS.

Under FCC regulations and as required by the Commission, an ETC applicant must demonstrate its ability to remain functional in emergency situations.[64] Q LINK commits to providing and maintaining essential telecommunications services in times of emergency. In particular, Q LINK has access to the significant and well-established network and facilities of Sprint PCS, and Sprint PCS is contractually obligated to provide these services in emergency circumstances, including maintaining reasonable back-up power to ensure the functionality of Q LINK's service without an external power source, and the ability to reroute traffic around damaged facilities, and manage traffic spikes resulting from emergency situations. (Am. App., 13).

Under the Sprint PCS agreement, Q LINK provides to its customers the same ability to remain functional in emergency situations as currently provided by Sprint PCS to its own customers. (Am. App. 13). In addition, Sprint PCS's ability to remain functional in emergency situations is well-known.[65] And, Q LINK has re-affirmed its commitment to remain functional in emergency situations by entering into a resale agreement with a T-Mobile reseller to permit redundant emergency services if Sprint PCSs services are unavailable.[66] (Q LINK Exhibit 2, 32:986-1002). Therefore, the Commission should conclude that Q LINK has presented sufficient

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[64] 47 C.F.R. § 54.202(a)(2).

[65] *See, e.g.*, *Sprint Nextel Corporation Verified Filing in Compliance with 47 C.F.R. §54.209*, CC Dkt. No. 96-45 (filed Sept. 30, 2011), at pg. 6.

[66] Q LINK is not requesting a change to its ETC service area designation as a result of its T-Mobile commitment. Instead, the resale of T-Mobile wireless service will only occur in wire center areas identified as Q LINK's proposed ETC service area and will be used as back up services.

evidence regarding Section 202(a)(2)'s requirement that an ETC applicant "demonstrate its ability to remain functional in emergency situations."

3. Q LINK COMPLIES WITH CONSUMER PROTECTION AND SERVICE QUALITY STANDARDS

Under FCC regulations and Commission requirements, an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.[67] "A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement."[68]

Q LINK satisfies Section 54.202(a)(3)'s requirement to demonstrate a commitment to satisfy applicable consumer protection and service quality standards. Q LINK's Petition states that "Q LINK commits to comply[ing] with the Cellular Telecommunication and Internet Association's Consumer Code for Wireless Service." (Am. App., 14). Therefore, under the express language of the rule, Q LINK satisfies its requirements of Section 54.202(a)(3). The Commission should conclude that Q LINK has presented sufficient evidence regarding its Section 202(a)(3)'s requirement.

4. THE RECORD DEMONSTRATES THAT Q LINK HAS THE FINANCIAL AND TECHNICAL CAPABILITY TO PROVIDE LIFELINE SERVICES.

Under FCC regulations and as required by the Commission, an ETC applicant must demonstrate that it is financially and technically capable of providing compliant Lifeline service in its proposed ETC service area.[69] The *Lifeline Reform Order* explains that, "among the relevant considerations for such a showing would be whether the applicant previously offered services to

[67] 47 C.F.R. § 54.202(a)(3).

[68] *Id.*

[69] 47 C.F.R. §54.202(a)(4) and 47 C.F.R. §54.201(h). Section 54.201(h) requires a state commission to determine that an ETC applicant "is financially and technically capable of providing the supported Lifeline service …"

non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state."[70]

Q LINK satisfies each of the federal requirements for Section 54.201(h). The evidentiary record demonstrates that Q LINK provides services to non-Lifeline consumers. (Q LINK Exhibit 2, 26:819-827; Q LINK Exhibit 1.5). Q LINK provides non-Lifeline and Lifeline service in 24 states, and has provided wholesale telecommunications in Illinois since 2012. (Q LINK Exhibit 1, 10:244-248, 11:265-267). Q LINK has been in business for several years, and has resold Sprint PCS services since 2012. (*Id.*). In addition, Q LINK will not rely exclusively on USF disbursement because Q LINK's total non-USF-sourced revenues for all jurisdictions account for about 60% of its total revenues. (*Id*. at 11:273-275, 11:278-280). In addition to non-Lifeline revenues, Q LINK has open credit lines for $5 million to supplement this income. (*Id*. at 12:287-288). And, Q LINK has not been subject to any enforcement action or ETC revocation proceeding in any state. (*Id*. at 10:235-238; Am. App., 15-16). Consequently, each of the federal guidelines for Section 54.201(h) is satisfied.

Faced with these criteria, Staff's testimony takes a peculiar interpretation of the *Lifeline Reform Order*'s guidelines. Examining the language of guidelines in Paragraph 388 of the *Lifeline Reform Order*, Staff testifies that, because the FCC only included "in any State" at the end of the list of guidelines, the FCC must have meant that the "in any State" only applies to the last guideline but not any of the others. (Staff Exhibit 1, 13:304-332; 25:555-27:602). In other words, according to Staff, the FCC's position is that an ETC applicant must present evidence

[70] *Lifeline Reform Order,* ¶ 388.

relating to each of the federal specific to Illinois except with respect to whether an ETC applicant has been subject to enforcement action or ETC revocation proceedings.[71] (*Id*.). Staff's novel interpretation has not been adopted by any other state in the country and,[72] in point of fact, Staff's interpretation is counter to legal principles of law that hold that a qualifying term at the end of a series list applies to all of the items in the list. *See Porto Rico Railway, Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920) ("When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.") The Commission should not adopt Staff's radical interpretation.

In addition to the federal guidelines, the evidence in the record demonstrates that Q LINK has sufficient technical and financial resources to satisfy the requirements of Section 54.201(h) and provide supported services throughout its proposed ETC service area. For example, the management team consists of industry stalwarts in the telecommunications industry, each with

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[71] Staff disingenuously attempts to hedge its interpretation by arguing that its "in-state" requirement is not dispositive for "marginally" qualified ETC applicants, but fails to explain how a carrier can marginally qualify using out of state information for these guidelines. (Staff Exhibit 1, 25:566-26:582). And, Staff's description of what "marginally" means during the hearing also fails to provide any clarity. (Hearing Tr., 142:13-14145:22). Further, Staff's suggested new Section 54.201(h) criteria (examined below in Section I.B.), impose a six-month in-state operations and compliance requirements that are at odds with Staff's discussion of "marginally" qualified ETC applicants (Staff Exhibit 1, 29:652-655, 30:682-686), and Staff's conclusions make clear that Staff is imposing a strict "in-state" requirement. (*See id.*, Staff Exhibit 2, 27:599-602) (the fundamental fact remains: "Q Link has not successfully competed for wireless end user customers in Illinois…") (*see also* Hearing Tr., 152:12-153:6) (stating that a carrier "fails" the first criteria of the Section 54.201(h) evaluation if it has not operated in Illinois for six-months).

[72] South Carolina briefly attempted to impose an "in-state" operations requirement but has since discarded that requirement. Furthermore, Staff cites to the Indiana Commission's Federal Comments in a Federal Docket suggesting prior in-state service may reduce the risk of non-compliance. (Staff Exhibit 1, 12:290-13:293). However, the Indiana Commission has not implemented such a requirement, and approved Q LINK's ETC petition. *See In the Matter of Petition of Q LINK Wireless LLC for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of offering Lifeline Service to Qualified Households,* Ind. Dkt. 41052-ETC 69. Consequently, if the Commission were to adopt Staff's "in-state" requirement, Illinois would be the only state in the country applying such a requirement.

over a decade of telecommunications experience. (Q LINK Exhibit 1, 15:354-367).[73] Indeed, Staff's counsel described Issa Asad as a "pioneer" in the telecommunications industry. (Hearing Tr., 76:5-79:6).[74] And, Q LINK provided evidence that it employs a third-party Lifeline bureau, CGM LLC ("CGM"), to process and validate its Lifeline procedures in other states. (Q LINK Exhibit 1, 16:379-391) (*See also* Q LINK Exhibit 3, 1:11-19). The use of CGM supplements Q LINK's expansive technical and managerial expertise by providing assistance where needed. In addition, Q LINK's technical expertise relating to Lifeline has already been verified by the Universal Service Administration Company ("USAC"). [redacted] (Q LINK Exhibit 1, 15:374-16:378). And, as Chuck Campbell, principal at CGM, explained, Q LINK's experience in marketing, distribution, enrollment and customer service practices resulted in no actual duplicate subscribers as a result of three separate IDVs. (Q LINK Exhibit 3, 2:80-3:83). Lastly, the FCC's implementation of the National Lifeline Accountability Database ("NLAD") and state eligibility databases will further ensure that Q LINK's Lifeline process and procedures are compliant with state and federal requirements.

The record in this matter demonstrates conclusively that Q LINK has sufficient technical and managerial expertise to provide supported services in its proposed service area in Illinois. The Commission should conclude that Q LINK has made the necessary showing and demonstrated that it is financially and technically capable of providing the Lifeline service.

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[73] Q LINK Exhibit 1 is the Rebuttal Testimony of Issa Asad, Chief Executive Officer of Q LINK Wireless LLC, in support of Q LINK Wireless LLC's *Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Funds Pursuant to Section 214(e)(2) of the Telecommunications Act*, ICC Dkt. 12-0095 (filed Dec. 11, 2014).

[74] "Hearing Tr." Is the transcript of the evidentiary hearing held on March 18, 2014 in Q LINK Wireless LLC's *Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Funds Pursuant to Section 214(e)(2) of the Telecommunications Act*, ICC Dkt. 12-0095.

5. Q LINK PROVIDED ITS PROPOSED TERMS AND CONDITIONS FOR SERVICE PLANS IT INTENDS TO OFFER TO ILLINOIS LIFELINE CUSTOMERS.

Under FCC regulations and as required by the Commission, an ETC applicant seeking only Lifeline support must submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers.[75] "To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans."[76]

Q LINK offers several service plans to customers, including Lifeline subscribers. Q LINK commits to offering the identical packages that it offers to its Illinois non-Lifeline customers throughout its proposed service area. (Am. App., 12). In each case, the Lifeline package will be priced at least $9.25 less than the comparable non-Lifeline package. Further, Q LINK's Petition provides a summary of information regarding its proposed Illinois Lifeline plans (Am. App., Exhibit 3), and links to descriptions of its terms and conditions for its plans both on Q LINK's website and in its FCC-approved compliance plan.[77] Q LINK also attached a copy of its then-current terms and conditions to its Compliance Plan.[78] Therefore, under the express language of the rule, Q LINK satisfies its requirements of Section 54.202(a)(5). The Commission should conclude that Q LINK has presented sufficient evidence regarding its Section 202(a)(3)'s requirement.

6. Q LINK COMMITS TO PART 54 SUBPART E REQUIREMENTS.

[75] 47 C.F.R. §54.202(a)(5).

[76] *Id.*

[77] Am. App., Exhibit 3 and Am. App., Exhibit 4 and Q LINK's Compliance Plan at http://apps.fcc.gov/ecfs/document/view?id=7021995283.

[78] *Id.* Q LINK has updated its terms and conditions during the course of these proceedings, and continually updates its terms and conditions to ensure that they are current.

Q LINK also commits to complying with all applicable requirements for low-income consumers in Part 54, Subpart E of the Commission's rules.[79] For example, Q LINK certifies that all Lifeline funding it receives will be used to subsidize rates for its Lifeline customers under the requirements of 47 C.F.R. § 54.403(a)(1). (Am. App., 4, 13). Q LINK further states that it will participate in NLAD,[80] and Illinois state-based Lifeline subscriber-based Lifeline certification under the requirements of 47 C.F.R. § 54.404. Q LINK's Compliance Plan also describes in detail the efforts Q LINK takes in the states where it is designated as an ETC provider.[81] In addition, Q LINK's Compliance Plan describes Q LINK's de-enrollment process under the requirements of 47 C.F.R. § 54.405(e),[82] the subscriber eligibility determination and certification process Q LINK will use under the requirements of 47 C.F.R. § 54.410,[83] and the process Q LINK will use for annual re-certification under the requirements of 47 C.F.R. § 54.415.[84]

In addition, 47 C.F.R. §54.422 contains the following annual reporting requirements for ETCs that receive low-income support:

> (a) In order to receive support under this subpart, an eligible telecommunications carrier must annually report:
>
> > (1) the company name, names of the company's holding company, operating companies and affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation) as well as relevant universal service identifiers for each such entity by Study Area Code. For purposes of this paragraph, "affiliates" has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended; and

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[79] 47 C.F.R. § 54.400, *et seq.*

[80] Am. App., Exhibit 4 and Q LINK's Compliance Plan at http://apps.fcc.gov/ecfs/document/view?id=7021995283, at page 15.

[81] *Id*. at pages 15-18.

[82] *Id*. at pages 18-20.

[83] *Id*. at pages 6-11.

[84] *Id*. at pages 11-13.

(2) Information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

(b) In order to receive support under this subpart, a common carrier designated as an eligible telecommunications carrier under section 214(e)(6) of the Act must annually provide:

(1) Detailed information on any outage in the prior calendar year, as that term is defined in 47 C.F.R. 4.5, of at least 30 minutes in duration for each service area in which the eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect:

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 C.F.R. 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(2) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;

(3) Certification of compliance with applicable service quality standards and consumer protection rules;

(4) Certification that the carrier is able to function in emergency situations as set forth in §54.202(a)(2);

(c) All reports required by this section must be filed with the Office of the Secretary of the Commission, and with the Administrator. Such reports must also be filed with the relevant state commissions and the relevant authority in a U.S. territory or Tribal governments, as appropriate.

47 C.F.R. §54.422.

Q LINK commits to complying with the applicable Section 54.422 annual reporting requirements required of it as a recipient of Lifeline support, and commits to submitting the applicable reports with the Commission under Section 54.422(c).[85]

The Commission should conclude that Q LINK has made the necessary showing regarding its commitment to comply with Part 54, Subpart E of the Commission's rules.

7. A FIVE-YEAR NETWORK IMPROVEMENT PLAN IS NOT REQUIRED.

Lastly, under FCC regulations as amended by the *Lifeline Reform Order*, a carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC.[86] Q LINK seeks ETC designation solely for reimbursement for provision of subsidized Lifeline services to eligible customers. (Am. App., 1, 13). The Commission should conclude that Q LINK has made the necessary showing on this issue.

D. Q LINK SATISFIES ILLINOIS COMMISSION RULES GOVERNING WIRELESS ETCS.

In addition to Q LINK's satisfaction of requirements of the FCC's *ETC Designation Order* and federal statutory and regulatory requirements, Q LINK also satisfies the applicable requirements of Commission's rules governing ETCs, 83 Ill. Admin. Part 736 and Part 757, to the extent a waiver is not requested.[87] Q LINK's Petition and testimony request waiver of certain provisions of Part 736 under 83 III. Adm. Code Parts 736.610, 736.620, 736.630, 736.640,

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[85] Am. App., Exhibit 4 and Q LINK's Compliance Plan at page 20 (found at http://apps.fcc.gov/ecfs/document/view?id=7021995283) (stating that "Q LINK will report all information required by section 54.422, as it may heretofore be amended.").

[86] 47 C.F.R. §54.202(a)(1)(ii).

[87] Q LINK notes that the Commission has recommended eliminating all portions of Part 736 except Sections 736.100, 736.105, 736.110, 736.120, 736.305, 736.500, and 736.555. *In re Amendment of 83 Ill. Adm. Code 736*, Initiating Order, ICC Dkt. 14-0076 (rel. Jan. 23, 2014) ("*Part 736 Revision Proceeding*"). Q LINK commits to complying with all then-binding sections of Part 736.

736.650, 736.685 and 736.690.[88] (Am. App., 14) (Q LINK Exhibit 1, 29:686-691) (Q LINK Exhibit 1.9) (certifying compliance with various Part 736 sections under an affidavit statement).

Under 83 Ill. Admin. Section 736.110, the Commission may grant a waiver of the provisions requested by Q LINK. Staff acknowledges that, in past ETC proceedings, it has supported waivers from Sections 736.610, 736.620, 736.630, 736.640, 736.650, 736.660, 736.685, and 736.690 as reasonable exceptions for cases in which ETCs provide prepaid services, for which no monthly bills are issued. (Staff Exhibit 1, 32:724-729). Consequently, the Commission should affirm that each of Q LINK's waiver requests is reasonable in light of the prepaid service being offered.

The evidentiary record also establishes that Q LINK will comply with the remaining sections of Part 736. Q LINK's testimony reaffirms its commitment to comply with Part 736. (Q LINK Exhibit 1, 29:683-698; Q LINK Exhibit 1.9; Staff Exhibit 1.9b (Affidavit of Assad)). In addition, the Petition affirms that "Q LINK will abide by rules denominated as 83 Ill. Adm. Code 736, "Service Quality and Customer Protection Applicable to Wireless Eligible Telecommunications Carriers" ("WETC Rules") …"[89] (Am. App., 14). And, as mentioned above, Q LINK agrees to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service throughout its service areas, including in proposed ETC designated service areas in Illinois, which satisfies 83 Ill. Admin. Section 736.500. (Am. App., 14). And, with respect to 83 Ill. Admin. Section 736.305, Q LINK has demonstrated that Sprint PCS (with resold T-Mobile USA service as a backup), will provide adequate emergency operations, including a reasonable amount of backup power. (Q LINK

[88] Q LINK's Petition requested a waiver for Part 736.680 but withdrew that request in its Rebuttal Testimony. (*Compare* Am. App., 14 *to* Q LINK Exhibit 1, 29:683-691 and Q LINK Exhibit 1.9).

[89] The Petition further states that "Q LINK will comply with Part 736.515 by reporting complaints received by it regarding dropped calls and signal strength." (Am. App., 14).

Exhibit 2, 32:984-1002). And, Q LINK's evidentiary submissions satisfy the current version of 83 Ill. Admin. Section 736.555 through its submission of wire center-based maps.[90] (*See* Q LINK Exhibit 1.3). However, Q LINK recognizes that the *Part 736 Revision Proceedings* proposes revisions to mapping requirement to require exchange-based maps, among other things. Q LINK will provide such maps upon adoption of the new rule.

The evidentiary record also establishes that Q LINK will comply with Part 757. Subpart E of Section 757 applies to Lifeline Services. 83 Ill. Admin. Section 757.400, "Lifeline Service Requirements," provides as follows:

> a) Each eligible telecommunications carrier shall participate in the Lifeline Program adopted by the FCC in 47 CFR 54. Subpart E as of February 6, 2013. This incorporation does not include any later amendments or editions.
>
> b) Each eligible telecommunications carrier shall comply with all Lifeline Program requirements adopted by the FCC in 47 CFR 54. Subpart E as of February 6, 2013. This incorporation does not include any later amendments or editions.
>
> c) Each eligible telecommunications carrier shall meet additional Lifeline service requirements, if any, established by Commission Order.
>
> d) Each eligible telecommunications carrier shall complete Exhibit A and file an original of this report with the Chief Clerk of the Illinois Commerce Commission within 30 days after the end of each calendar quarter. Carriers that have eligible telecommunications carrier designations for both wireline and wireless operations shall report separately for wireline and wireless operations. Any LEC seeking administrative cost reimbursement shall complete Exhibit B and file an original of this report with the Chief Clerk of the Illinois Commerce Commission within 30 days after the end of each calendar year.

83 Ill. Admin. Section 757.400. In addition, Section 757.425 further provides that an individual Lifeline applicant must meet the requirement "Lifeline Program eligibility criteria adopted by the FCC in 47 CFR 54. Subpart E as of February 6, 2012."

[90] Section 736.555 does not currently direct that how an ETC service area must be shown (*i.e.*, by wire center, exchange, etc.).

As demonstrated above and in its FCC-approved Compliance Plan, Q LINK will fully participate and comply with the 47 CFR 54. Subpart E, satisfying Sections 757.400 and 757.425.[91] Further, Q LINK commits to complying with all additional Lifeline service requirements established by Commission Order and submitting all required reporting. (Am. App., 16).

The Commission should find that the commitments made by Q LINK satisfy the applicable requirements for Commission's rules governing ETCs, 83 Ill. Admin. Part 736 and Part 757, and grant Q LINK's request for a waiver from Sections 736.610, 736.620, 736.630, 736.640, 736.650, 736.660, 736.685, and 736.690 as reasonable exceptions for cases in which ETCs provide prepaid services, for which no monthly bills are issued.

E. Q LINK SATISFIES THE PUBLIC INTEREST REQUIREMENTS.

Lastly, before designating an additional ETC for an area served by an ETC, the Commission must find such designation to be in the public interest.[92] The evidentiary record further demonstrates that designating Q LINK as an ETC provider in Illinois is in the public interest.

In the *ETC Designation Order*, the FCC encouraged the Commission to implement the FCC's framework for analyzing the public interest so as to promote a consistent approach among the states in applying the universal service principles of preserving and advancing universal service and competitive neutrality and improving the long-term sustainability of the USF.[93] However, the FCC acknowledged that state commissions may use, and have used, additional

[91] (*See* Am. App., Exhibit 4 and Q LINK's Compliance Plan at http://apps.fcc.gov/ecfs/document/view?id=7021995283) (*see also* Am. App., 16).

[92] 47 U.S.C. §214(e)(2).

[93] *ETC Designation Order*, ¶¶ 19, 58

factors in their public interest analysis, but only "***in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral***."[94]

The Commission has repeatedly adopted the FCC's *ETC Designation Order* as the basis for analyzing an applicant's request for ETC designation.[95] Consistent with past Commission rulings, the Commission should find that it will use the guidelines from the FCC's *ETC Designation Order*, as amended by the *Lifeline Reform Order* (where applicable), as the general framework and minimal requirements for considering the ETC designation requested by Q LINK and for establishing whether Q LINK's application is in the public interest.

The FCC's *ETC Designation Order* indicated that it would continue to balance the following factors in performing its public interest analysis for ETC applicants:

> (1) Consumer Choice: The [FCC] takes into account the benefits of increased consumer choice when conducting its public interest analysis. In particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas. The [FCC] has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.
>
> (2) Advantages and Disadvantages of Particular Service Offering: The [FCC] also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the [FCC] has examined the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting and other premium services. The [FCC] also examines disadvantages such as dropped call rates and poor coverage.

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[94] *Id.* at ¶ 19 (emphasis added), *see also* ¶¶40-44, ¶60.

[95] *See, e.g., American Broadband ETC Order*; *Cricket ETC Order*; *Telrite ETC Order*; *i-wireless ETC Order*; *In re YourTel America Inc.'s Application for Designation as an Eligible Telecommunications Carrier for purposes of Receiving Universal Service Support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996,* Order, ICC Dkt. No. 09-0605 (rel. Mar. 24, 2010); *In re PlatinumTel Communications, LLC, Application for Designation as an Eligible Telecommunications Carrier for purposes of Receiving Federal Universal Service Support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996*, Order, ICC Dkt. No. 09-0269 (rel. Nov. 24, 2009); *In re Nexus Communications, Inc.,* Order, ICC Dkt. No. 06-0381 (rel. Oct. 25, 2006)

ETC Designation Order, ¶44.

In addition to balancing the foregoing factors, the *ETC Designation Order* provides that the FCC will conduct a "creamskimming" analysis in areas for which an applicant seeks designation below the study area level of a rural telephone company. However, the *Virgin Mobile et al. Forbearance Order* eliminated that requirement for Lifeline-only ETC applicants like Q LINK.[96]

The FCC also suggests that a state commission may consider limiting the number of ETCs due to the strain on the Federal USF by examining per-line USF support received by the individual LEC, on a case-by-case approach. The FCC, however, declined to adopt a specific national per-line support benchmark to be applied in analyzing the strain on the Federal USF,[97] and Staff has presented no evidence that Q LINK's designation would strain the Federal USF.

The Commission has broad discretion in analyzing whether the designation of an additional carrier as an ETC in a given area, thereby allowing the carrier to seek USF support, is in the public interest. The Commission should follow its well-established practice, and adopt and implement the FCC's analytical framework so that the guidelines described in the *ETC Designation Order* will be the minimum guidelines applied in this proceeding.[98]

A public interest analysis of ETC applications involves balancing a number of factors.[99] One such factor is the benefit of increased customer choice, although that value alone is unlikely

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[96] *Virgin Mobile et al. Forbearance Order,* ¶ 13 ("Any creamskimming concerns in an area of a rural telephone company are not relevant in considering the designation of a Lifeline-only ETC. Creamskimming is not a public-interest consideration in the Lifeline context, whether the competing carrier is offering wireline or wireless service.")

[97] *ETC Designation Order,* ¶¶ 55-56.

[98] *See, supra,* fn. 61

[99] *ETC Designation Order*, ¶ 41.

to satisfy the public interest test.[100] However, the *ETC Designation Order* indicates that offering a choice in rural and high-cost areas may be an especially important consideration.[101]

In the instant proceeding, designating Q LINK as an ETC to offer Lifeline service will increase customer choice for low-income consumers eligible for Lifeline support in the areas requested. (Am. App. 25-26). Q LINK has examined the Illinois Lifeline marketplace and determined that current ETC providers are not fulfilling the goals of the Lifeline program. Currently, there are over 864,000 eligible Lifeline consumers in Illinois who do not receive service from another Illinois ETC provider. (*See* Q LINK Exhibit 2, 29:904-906) (Q LINK Exhibit 3.1 and 3.2). Further, there are a total of 1,466,400 Lifeline eligible consumers in Illinois, which means that the current wireline and wireless Illinois providers are not serving close to 60% of the market. (*Id*.). The Lifeline component of Q LINK's business plan is designed to address this market shortfall. And, Q LINK's business plan goes into greater detail concerning Q LINK's business approach to meet these needs through a unique kiosk-based marketing approach which is designed to target low-income consumers. (*See* Q LINK Exhibit 1.1; Q LINK Exhibit 2.4). The evidentiary record is clear that designating Q LINK will provide Illinois consumers with the choice of an additional Lifeline provider.[102]

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[100] *Id*. at ¶ 44.

[101] *See id.*

[102] Again arguing for a change in Commission practice, Staff's testimony takes the position that an ETC applicant must demonstrate "its designation will produce concrete public interests benefits," be operating in Illinois for at least six month, and demonstrate (rather than certify, as required by federal law and rules) compliance with FCC and Commission rules. (Staff Exhibit 1, 33:748-753). As described more fully below, the requirement that a carrier operate in Illinois for six-months is an undue barrier to market entry and exceeds the Commission's regulation of wireless ETC applicants, and the undefined "concrete benefit" threshold Staff is unconstitutionally vague and arbitrarily determined. Each of these requirements are also inconsistent with the FCC's direction to state commission. *ETC Designation Order*, ¶¶19, 40.

Another factor for consideration is the advantages and disadvantages of the particular service offering.[103] Q LINK's offering is intended to provide additional options for low-income customers and increased access to emergency services for the public overall, to the extent that it enables low-income customers to obtain service. Specifically, Q LINK offers unlimited voice service at affordable rates without the typical burdens (*e.g.*, credit checks, long-term commitments, and early termination fees) that otherwise prevent many economically disadvantaged customers from obtaining wireless services. (Am. App., 3-6; Am. App., Exhibit 3). In addition, analysis of the current Lifeline providers, based on the Commission website,[104] demonstrates that Q LINK's proposed Lifeline plans will offer consumers distinct advantages. For example, many of the current Lifeline providers do not offer a 'free of charge' (after application of the Lifeline discount) plan. (Q LINK Exhibit 2, 28:871-882). By contrast, all three of Q LINK's proposed Lifeline plans are free (after discount) to the consumer and, therefore Q LINK would offer low-income consumers a lower-cost alternative in the marketplace. (*Id*. at 28:873-29:879). In addition, Q LINK's proposed service area differs from the only other similar Lifeline plan currently provided in Illinois.[105] (*Id*. at 29:898-903). TracFone's plans are one the most popular plans in Illinois. (Q LINK Exhibit 2, 28:871-872) (Q LINK Exhibit 3.2). Q LINK's proposed service area differs from TracFone's service area and therefore offers Illinois consumers in those areas the choice of one of the most popular Lifeline plans in Illinois.

[103] *ETC Designation Order*, ¶ 18.

[104] http://www.icc.illinois.gov/Consumer/LifelineAndLinkUp.aspx

[105] TracFone Corporation offers similar plans, but does not appear to offer service in Sprint PCS coverage areas. (*See* Q LINK Exhibit 2, 29: 901 fn. 114), "In Illinois, TracFone obtains service from the following underlying carriers: ALLTEL; AT&T Wireless; T-Mobile; US Cellular; and Verizon Wireless" and attached a list of rural and non-rural ILEC names (without exchanges, zip codes or wire centers)." http://www.icc.illinois.gov/docket/files.aspx?no=09-0213&docId=135734, *In re TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the State of Illinois for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Dkt. No. 09-0213, *see* Petition and Exhibit 11; *see also* Order, designating the service area as "all portions of the State of Illinois where wireless service is available from TracFone's underlying carriers."

Q LINK also has examined the Illinois Lifeline marketplace and determined that current ETC providers are not fulfilling the goals of the Lifeline program. Currently, there are over 864,000 eligible Lifeline consumers in Illinois who do not receive service from another Illinois ETC provider. (*See* Q LINK Exhibit 2, 29:904-906) (Q LINK Exhibit 3.1 and 3.2). Further, there are a total of 1,466,400 Lifeline eligible consumers in Illinois, which means that the current wireline and wireless Illinois providers are not serving close to 60% of the market. (*Id.*) The Lifeline component of Q LINK's business plan is designed to address this market shortfall. Q LINK's business plan goes into greater detail concerning Q LINK's business approach to meet these needs. (*See* Q LINK Exhibit 1.1; Q LINK Exhibit 2.4). The evidentiary record is clear that designating Q LINK's marketing and Lifeline plans provide a distinct advantage over other Lifeline providers.[106]

Lastly, Q LINK acknowledges that 47 C.F.R. §54.405(a) requires all ETCs to make Lifeline services available to qualifying low-income consumers, and this service will be available throughout Q LINK's service areas. (Q LINK Exhibit 2, 13:388-394). Designating Q LINK as an ETC provider would make popular Lifeline plans available to currently underserved and unserved customers in Illinois, thereby offering telecommunications to a market that is often limited in service and selection. (Am. App., 25-27).

The Commission should find that the commitments made by Q LINK in its application regarding compliance with the federal requirements and with Illinois-specific requirements, as set forth in its amended Petition, support a finding that ETC designation is in the public interest.

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[106] Again arguing for a change in Commission approach, Staff's testimony takes the position that an ETC applicant must demonstrate "its designation will produce concrete public interests benefits," be operating in Illinois for at least six months, and demonstrate (rather than certify, as required by federal law and rules) compliance with FCC and Commission rules. (Staff Exhibit 1, 33:748-753). The requirement that a carrier operate in Illinois for six-months is discriminatory, and the undefined "concrete benefit" threshold imposes duly costs on ETC applicants. Each of these requirements is market entry barriers inconsistent with the FCC's direction to state commission." *ETC Designation Order*, ¶¶19, 40.

In light of the evidentiary submissions in this matter, Q LINK has carried its burden of demonstrating that it meets federal and Illinois ETC qualification requirements. The Commission should grant Q LINK's Petition and designate Q LINK an ETC provider in the service area indicated in Q LINK Exhibit 2.1.

II. STAFF'S ATTEMPT TO MODIFY ILLINOIS ETC DESIGNATION REQUIREMENTS THROUGH TESTIMONY SHOULD BE REJECTED BY THE COMMISSION

As demonstrated above, the Commission has repeatedly adopted the federal guidelines and minimum requirements announced in the FCC's *ETC Designation Order*, as amended by the *Lifeline Reform Order*. However, ignoring the fact that there continue to be 864,299 low income households that are not receiving Lifeline support from the existing providers, Staff requests that "the Commission [] perform ETC designation using different standards than it has in the past." (Staff Exhibit 1, 15:340-341). Staff's testimony raises several unwarranted and unsubstantiated new ETC requirements.[107] Q LINK urges the Commission to reject Staff's invitation to radically alter Illinois ETC application requirements through Staff's new testimonial requirements.

A. STAFF'S ATTEMPT TO CRAFT NEW ETC DESIGNATION REQUIREMENTS THROUGH TESTIMONY EXCEEDS THE COMMISSION'S PERMISSIBLE SCOPE OF AUTHORITY AND REGULATION.

Staff's new testimonial requirements exceed the permissible scope of the Commission's regulatory authority and FCC's directives relating to additional ETC application requirements. The Commission should reject Staff's radical modification of the FCC requirements established

[107] During the hearing in this matter, Staff witness Dr. Qin Liu testified that the testimony submitted by Staff in this matter was her own testimony, but not necessarily the opinions of Staff. (Hearing Tr.,131:8-133:1). We urge both Staff and the Commission to reject Dr. Liu's new testimonial requirements for ETC applicants. For clarity, Q LINK refers to Dr. Liu's testimony submitted in these proceedings as that of "Staff," while still recognizing that Staff may or may not adopt Dr. Liu's opinions.

in the *ETC Designation Order* (as amended by the *Lifeline Reform Order*), which the Commission has affirmed on numerous occasions.[108]

Section 332(c)(3)(A) of the Act expressly prohibits states from regulating the entry or the rates charged by any provider of CMRS service or any private mobile service by stating that "no State or local government shall have any authority to regulate the entry of the rates charged by any commercial mobile service or any private mobile service." 47 U.S.C. § 332(c)(3)(A); *see also WWC Holding Co., Inc. v. Sopkin*, 488 F.3d 1262, 1272 (10th Cir. 2007) (stating that a state commission's regulations will be preempted under Section 332(c)(3)(A) of the Act if the carrier "demonstrate[s] that a state's requirements effectively regulate rates or are so onerous as to constitute a barrier to entry."). Further, FCC decisions are quite clear that, while state commissions are not bound by the FCC guidelines when they evaluate ETC applications,[109] a state commission may only impose new requirements that are "competitively neutral requirements that do not regulate rates or entry" for wireless and CMRS providers.[110] Further, the *ETC Designation Order* expressly states that state commissions should impose "annual certification and reporting requirements uniformly ***on all ETCs they have previously designated***."[111] And, the FCC makes clear that a state commission's ETC requirements must be imposed "in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral."[112]

Staff's new testimonial ETC requirements ignore these restrictions by creating market barrier-restrictions that apply only to new wireless ETC applicants. For example, Staff relies

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[108] *See* supra, fn. 61.

[109] *ETC Designation Order*, ¶¶ 58-64.

[110] *Id*. at ¶ 31.

[111] *Id*. at ¶ 58 (emphasis added).

[112] *Id.* at ¶ 19 (emphasis added), *see also* ¶¶40-44, ¶60.

heavily on a new six-month “in-state” requirement for its Section 54.201(h) analysis of ETC applications (Staff Exhibit 1, 23:516-517, 24:537-544, 25:566-27:602, 29:652-31:691),[113] which unjustifiably delays ETC market entry to out-of-state wireless providers. In addition, Staff urges the Commission to adopt a Section 214(e)(2) public interest analysis based exclusively on a carrier’s compliance record in Illinois. (*Id.* at 33:748-753). Again, this requirement imposes a market barrier restriction for out of state wireless providers. Each of these Staff restrictions violate federal requirements, and is invalid *per se*.

In addition, Staff’s new testimonial ETC requirements impose rate regulations and reporting requirements on only new wireless ETC applicants, in violation of federal requirements. In its proposed Section 214(e)(2) public interest analysis, Staff suggests that Q LINK must demonstrate concrete “benefits to consumers that are currently unavailable in the marketplace” that Q LINK’s service offering will result in increased consumer choice.[114] However, Staff’s argument makes clear that it is evaluating the number of voice minutes and price associated with each proposed Lifeline plan in determining whether the proposed plan will result in consumer choice. This is necessarily so because Staff insists that only supported services (*i.e.,* voice grade services, *et al.*) can be used in the analysis.[115] Consequently, Staff’s Section 214(e)(2) public interest analysis is an attempt to regulate the number of minutes and

[113] Staff’s Testimony deceptively cites to its own testimony in two pending ETC proceedings as authority, neither of which were adopted by the Commission because one ETC applicant withdrew its petition and the other applicant’s petition is still pending. (Staff Exhibit 1, 29 fn 40). It is apparent that Staff has no proper justification for imposing this new requirement.

[114] (Staff Exhibit 2, 58:1291-1292). Q LINK Exhibit 2 is the Testimony of Dr. Qin Lui, Federal Policy Group, Policy Division, Illinois Commerce Commission (“Staff”), filed in Q LINK Wireless LLC’s *Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Funds Pursuant to Section 214(e)(2) of the Telecommunications Act*, ICC Dkt. 12-0095 (filed Feb. 7, 2014).

[115] *See* Staff Exhibit 2, 59:1298-1322 (arguing that only supported services should be permitted in the Section 214(e)(2) public interest analysis).

rates offered by wireless ETC applicants. A state commission's ability to regulate ETC providers is expressly limited to non-rate and non-market entry regulations. *WWC Holding*, 488 F.3d at 1274 ("the Act establishes a detailed regulatory scheme for commercial mobile services, with primary jurisdiction given to the FCC, but expressly permits states to regulate non-rate and non-entry aspects of mobile services."). Further, Staff admits that its new testimonial requirements impose new certification and reporting requirements that would not be imposed uniformly on previously designated ETC providers, despite the FCC's direction to the contrary.[116] Staff's new testimonial requirements directly attempt to regulate Q LINK's wireless plans for voice services, and therefore plainly exceed permissible limits of regulation for the Commission.

Second, if the Commission adopts Staff's new testimonial ETC requirements, it would be an abuse of discretion because these new ETC requirements are not imposed uniformly to all carriers through a rulemaking. Abuse of discretion is found when the Commission establishes new rules on an *ad hoc*, adjudicatory basis on persons who justifiably relied on prior orders and policies or established law or rules. *See Senn Park Nursing Center v. Miller*, 104 Ill. 2d 169, 175-179 (1984) (holding that an "amendment of procedure was rule within meaning of the state Administrative Procedure Act and agency thus did not follow proper procedure for adoption of the rule, the rule was invalid"). Staff's new testimonial requirements clearly fall within the definition of a "rule" because they intend to generally implement, apply, interpret or prescribe law or policy for the Commission. *See id*. at 178. Indeed, Staff's testimony admits as much by stating, "Consistent with §214(e)(2) of the 1996 Act and the Lifeline Reform Order, the

[116] (Hearing Tr., 107:12-108:15); *See ETC Designation Order*, ¶ 58.

Commission can and should impose increasingly stringent standards upon new ETC applicants…" (Staff Exhibit 1, 15:352-16:354).[117]

Adopting Staff's new testimonial requirements outside a rulemaking proceeding would be improper. For example, Q LINK's business plan seeks to build on its national success by launching Lifeline and non-Lifeline services at the same time in Illinois. (Am. App., 3; Q LINK Exhibit 1, 11:276-13:306). As stated above, Q LINK has successfully deployed this business plan in 24 other states without exclusive reliance on Lifeline subsidies. (Q LINK Exhibit 1, 10:239-14:337). However, Staff's new testimonial requirement employing a six-month "in-state" operations requirement effectively forces Q LINK to either (1) discard its well-established business plan for launching Lifeline and non-Lifeline services at the same time, or (2) abandon Illinois. Worse still, Staff's new testimonial requirements were created by an eager staffer with no experience in telecommunications business plans, experience in prepaid wireless services or experience in operating a wireless company. (Hearing Tr., 95:18-20, 96:23-98:13).

Further, Staff's new testimonial requirements should not be adopted by the Commission without affording industry an opportunity to comment on these new requirements. The Commission should reject Staff's new ETC designation requirements because Staff did not introduce them in the context of a rulemaking.

B. STAFF'S NEW TESTIMONIAL ETC DESIGNATION REQUIREMENTS ARE ARBITRARY AND CAPRICIOUS.

Second, Staff's new testimonial ETC application requirements are arbitrary and capricious. While the Commission may have the authority to make limited modifications to its rules on an *ad hoc,* case by case basis, the Commission may not make arbitrary and capricious

[117] Further, to the extent that Staff attempts to avoid the Commission's rulemaking requirements by arguing that its new testimonial requirements are not "generally applicable," the requirements would then be discriminatory against Q LINK because Staff has presented no reason why these requirements should be applied against Q LINK only, and not applied to other ETC designee or applicants.

changes. *City of Chicago v. Illinois Commerce Commission*, 133 Ill. App. 3d 435, 440-41 (1985).

None of Staff's proposed new requirements are supported or justified and, as such, are arbitrary and capricious. For example, Staff recommends an "exchange-only" service center ETC designation requirement based on a 17-year old Commission Order that evaluated a wireline provider's tariffed service areas rather than a wireless provider. (Staff Exhibit 2, 20:469-21:481). However, Staff admits that it did not review or consider the Illinois statutory definition of "exchange" before imposing its new testimonial requirement.[118] (Hearing Tr., 124:17-125:13). The statutory definition makes clear that exchanges relate to the provision of wireline local exchange telecommunications service and is therefore not applicable to the provision of wireless service. And, Staff's statement that all telephone numbers are assigned according to exchanges is imprecise and irrelevant. (Hearing Tr., 125:1-2). While telephone numbers are assigned to exchanges, telephone numbers are also assigned to specific wire center areas and localities ***within*** each exchange.[119] Moreover, wireless carriers provide national local calling and do not rate calls based on exchanges. It is therefore unclear why Staff would impose a wireline rate setting geographic area upon wireless carriers. Staff's decision to impose exchange-only ETC designations appears arbitrary.

In addition, Staff's recommendations relating to Section 54.201(h) requirements can only be described as seven "randomly chosen" because Staff provides no justification as to how Staff arrived at the specific requirements. (Staff Exhibit 2, 20:466-21:481; Staff Exhibit 1, 29:652-

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[118] 220 ILCS 5/13-206 provides that "'Exchange' means a geographical area for the administration of telecommunications services, established and described by the tariff of a telecommunications carrier providing local exchange telecommunications service, and consisting of one or more contiguous central offices, together with associated facilities used in providing such local exchange telecommunications service. . ."

[119] *See* CO Code Part 1 Job Aid, at http://www.nanpa.com/number_resource_info/co_codes.html, page 7 (provided by the North American Numbering Plan Administration).

31:695). For example, Staff's six-month "in-state" operations requirement provides no justification for why Staff chose six months, as opposed to three months or twelve months. (Staff Exhibit 1, 29:652-655, 30:682-31:688). In addition, Staff insists on one-year of financial statements. (Staff Exhibit 1, 30:670-675). Why one year? Staff's testimony is silent.

Most egregiously, however, Staff provides no justification for why it establishes a 20% non-Lifeline ratio as a condition for ETC approval. (*Id*. at 29:663-30:667). At the hearing, Staff attempts to justify its decision as follows:

> Well, your Honor, Illinois market – Based on the companies Illinois market is about – amoung households with telephone services is 80, 85 percent of non-Lifeline; 15 to 20 percent of Lifeline. So the market make-up is 85 versus 15 non-Lifeline to Lifeline. So 20 percent is not magic number, but it's reasonable - - very reasonable compared to whole market make-up.

(Hearing Tr., 154:16-23).[120] In other words, Staff just made it up. Moreover, as discussed, the Staff member that made it up has no experience in marketing telecommunications services, in running any business, or launching a wireless service. (Hearing Tr., 95:18-20, 96:23-98:13). There is no reason for Staff's artificial threshold or the quite-specific 20% non-Lifeline threshold requirement for providing ETC services in Illinois. Such a rough-shot approach to establishing carrier's rights is the very definition of arbitrary and capricious.

The Commission should reject each and every new testimonial requirement Staff advanced in this proceeding, and apply the *ETC Designation Order* (as amended by the *Lifeline Reform Order*) as the minimum requirements for designating an ETC in Illinois.

C. STAFF'S NEW TESTIMONIAL REQUIREMENTS ARE UNCONSTITUTIONALLY VAGUE

[120] Staff also goes on to explain that these numbers are based on both wireless and wireline companies.

Lastly, Staff's new testimonial requirements are unconstitutionally vague, and should not be applied to Q LINK in this proceeding. A statute or regulation is unconstitutionally vague if it fails to give a person of ordinary intelligence fair notice of conduct proscribed or required by the regulation. *Giano v. Senkowski*, 54 F.3d 1050, 1057 (2nd Cir. 1995) (emphasis added). And, it is a fundamental notion of due process that regulations must give adequate warning of what they require or prohibit. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *see also Hayes v. New York Attorney Grievance Committee of the Eight Judicial Dist*., 672 F.3d 158, 168-69 (2nd Cir. 2012) ("In addition to a requirement of adequate notice of what is prohibited, a regulation must provide at least as much notice of what is required.").

Here, Q LINK had no notice of Staff's new testimonial requirements at the time it filed its Initial or amended Petition. Indeed, Staff appears to continue to flush out its new ETC requirements even on its Surrebuttal Testimony.[121] Moreover, the new testimonial requirements presented by Staff are not fully developed because Staff's witness cannot provide details as to how the requirements should be applied or what would constitute sufficient evidence to pass the new thresholds. (*See* Hearing Tr., 155:24-164:22). For example, with respect to evaluating an applicants' financial statements, Staff testifies that "There's no simple index … There's so many factors to consider." (*Id*. at 156:5-15). When asked if a financial statement showing one dollar profit would pass this threshold, Staff replies that it "depends on other factors." (*Id*. at 156:20-21; *see also id.* at 156:22-19). Staff never explains what those other factors are. Staff's testimony further responds that its threshold requirements relating to enforcement depend on other additional unarticulated outside factors (*id*. at 160:26-161:4, 162:18-163:5). The Commission should not adopt Staff's incompletely defined new testimonial requirements. And, even if the

[121] (*See, e.g.*, Staff Exhibit 2, 20:469-21:481) (adding a seventh Section 54.201(h) threshold).

Commission decides to adopt one or more of Staff's new testimonial requirements (which it should not), the Commission should not impose those requirements on Q LINK because Q LINK had no notice of them.

Staff's new ETC application requirements unduly restrict the ability of over 1.4 million eligible Illinois consumers from receiving Lifeline subsidies. The Commission should approve Q LINK's ETC Petition and find that it would be in the public interest to designate Q LINK as an ETC provider in Illinois. The Commission should have a plan to address the over 1.4 million Illinois consumers who are eligible for Lifeline subsidies, but are not currently service by Lifeline providers. Q LINK's Petition and the evidence in this matter demonstrate that Q LINK is well-situated to expand the reach of Lifeline services in Illinois, and comply with federal and state regulations for providing Lifeline services. However, these consumers continue to be denied Lifeline subsidies in what can only be described as arbitrary and ill-defined new requirements raised by Staff through its testimony. The Commission should reject Staff's new testimony ETC requirements and direct Staff to examine ways to increase the number of ETC providers in Illinois to address these eligible low-income consumers.

III. CONCLUSION

The Commission should adopt the requirements from the *ETC Designation Order* and find that the evidentiary record in this proceeding demonstrates that Q LINK WIRELESS LLC is qualified and should be designated as an Eligible Telecommunications Carrier in Illinois for the limited purpose of receiving federal Universal Service Funds under Section 214(e)(2) of the Telecommunications Act in the service area identified in Q LINK Exhibit 2.1.

Respectfully submitted,

Q LINK WIRELESS LLC

_/s/__Henry T. Kelly________

By: One of its attorneys

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